



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2011-1128]

RIN 1625-AA00

Safety Zone; Gulf Intracoastal Waterway, Mile Marker 35.2 to Mile Marker 35.5, Larose, Lafourche Parish, LA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the specified waters of the Gulf Intracoastal Waterway, Larose, Lafourche Parish, Louisiana. This temporary safety Zone is needed to protect the general public, vessels and tows from destruction, loss or injury due to the installation of a new sheetpile floodwall on the waterward side of the existing Larose floodwall and construction of a new rip-rap barge impact barrier on the Gulf Intracoastal Waterway side of the new floodwall.

DATES: This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through 11:59 p.m. June 30, 2012. This rule is enforceable with actual notice beginning 12:01 a.m. December 12, 2011.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG-2011-1128 and are available online by going to <http://www.regulations.gov>, inserting USCG-2011-1128 in the "Keyword" box, and then clicking "Search." They are also available for inspection or copying at the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail Ensign (ENS) Nicholas Jones, Coast Guard; telephone 985-857-8507 ext. 232, e-mail Nicholas.B.Jones@uscg.mil. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice

and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule. The Coast Guard received notice of the timeline for this project on December 2, 2011. This floodwall construction and repair project is necessary for flood protections; therefore, the Coast Guard determined that immediate action is needed to protect the personnel, general public, vessel and tows, and mariners from hazards associated with the floodwall repair and construction process. Publishing a NPRM would unnecessarily delay the effective date for this rule which would be contrary to the public interest. Delaying this project for the NPRM process would also interfere with the contractually imposed timeline for repair of the floodwall.

Under 5 U.S.C. 553(d)(3), good cause exists for not providing 30 days notice for this rulemaking. The Coast Guard received notice of the timeline for this project on December 2, 2011. Based on the necessity of this floodwall repair and construction project and the repair and construction timeline presented to the Coast Guard, immediate action is required. Delaying the effective date

would be contrary to public interest. Delaying or rescheduling the construction and repair to provide 30 days notice also is impracticable because of the dates the construction barges may be deployed to the project site. By making the rule effective immediately upon publication and enforceable with actual notice on December 12, 2011, the construction and repair of the floodwall can continue under the applicable contract.

Basis and Purpose

The US Army Corps of Engineers contracted installation of a new sheetpile floodwall on the waterward side of the existing Larose Floodwall and construction of a new rip-rap barge impact barrier on the waterward side of the new floodwall that will extend approximately 20-45 feet from the existing wall into the Gulf Intracoastal Waterway, Mile Markers 35.2-35.5, west of Harvey Locks.

Discussion of Rule

The Coast Guard is establishing a temporary Safety Zone in the Gulf Intracoastal Waterway, Mile Marker 35.2-35.5, bank to bank, West of Harvey locks, Larose, Lafourche Parish, Louisiana. The temporary safety zone will continue through June 30, 2012. Vessels and tows shall transit at slowest safe speed to minimize wake and, after leaving the slowest safe speed zone, proceed with caution to minimize

interference with construction activities.

All work on the project is scheduled to be complete by June 30, 2012.

Beginning December 12, 2011 thru June 30, 2012 two barges will be staged on the south side of the waterway at all times but will remain clear of the main channel limit. Notices to Mariners, regarding channel restrictions and closures, will be updated as the project progresses and as the information becomes available. Mariners can contact the contractor via VHF-FM channel 69. Mariners shall transit at their slowest safe speed to minimize wake and proceed with caution while passing through the construction area.

Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Regulatory Planning and Review:

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Executive Order 12866 or under

section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under that those Orders.

This rule creates a safety zone implementing slowest safe speed to minimize wake. Vessels will be allowed to enter and transit through the area. Advance notifications to the marine community regarding this safety zone and any restrictions or closures related to the floodwall repair and construction project will be made through Broadcast Notice to Mariners and Local Notice to Mariners. The impacts on routine navigation are expected to be minimal.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small

entities: the owners or operators of vessels intending to transit through the Safety Zone through June 30, 2012. This Safety Zone will not have a significant economic impact on a substantial number of small entities because this rule will be in effect for only a short period of time.

If you are a small business entity and are significantly affected by this regulation, please contact ENS Nicholas Jones, Marine Safety Unit Houma, at (985) 857-8507 ext. 232.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not

retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do

discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on

the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable

law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2-1, paragraph (34) (g), of the Instruction. This rule will be in effect until June 30, 2012, but is not expected to result in any significant adverse environmental impact as described in NEPA.

An environmental analysis checklist and a categorical

exclusion determination will be provided and made available at the docket as indicated in the ADDRESSES section.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165-- REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. A new temporary § 165.T08-1128 is added to read as follows:

§ 165.T08-1128 Safety Zone; Gulf Intracoastal Waterway, Mile Marker 35.2 to Mile Marker 35.5, Larose, Lafourche Parish, LA

(a) Location. Gulf Intracoastal Waterway, Mile Marker 35.2-35.5, West of Harvey Locks, bank to bank, Lafourche Parish,

Larose, Louisiana.

(b) Effective date. This rule is effective from 12:01 a.m. December 12, 2011 through 11:59 p.m. June 30, 2012.

(c) Periods of Enforcement. This rule will be enforced from 12:01 a.m. December 12, 2011 through 11:59 p.m. June 30, 2012. The Captain of the Port Morgan City or a designated representative will inform the public through Broadcast Notice to Mariners of the enforcement period for the safety zone as well as any changes in the planned schedule.

(d) Regulations. (1) In accordance with the general regulations in §165.23 of this part, entry into this zone should be at slowest safe speed to minimize wake through the duration of this rule. During waterway closures entry into this zone is prohibited unless authorized by the Captain of the Port Morgan City.

(2) Mariners shall transit from Mile Marker 35.2 to Mile Marker 35.5 and pass at slowest safe speed to minimize wake.

(3) Mariners should contact the attendant tug, the M/V YAYA on VHF-FM Channel 69 prior to arrival at the construction site for information regarding available horizontal clearance and passing instructions.

(4) All persons and vessels shall comply with the instructions of the Captain of the Port Morgan City and

designated on-scene patrol personnel. On-scene patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard.

(5) Advance notification of any anticipated waterway closures will be made through Broadcast Notice to Mariners and Local Notice to Mariners. During a closure, vessels requiring entry into or passage through the Safety Zone must request permission from the Captain of the Port Morgan City, or a designated representative and passage will be considered on a case-by-case basis. They may be contacted on VHF Channel 11, 13, or 16, or by telephone at (985) 380-5370.

Dated: December 8, 2011

J. C. Burton,
Captain, U.S. Coast Guard
Captain of the Port Morgan City, Louisiana

[FR Doc. 2012-1536 Filed 01/24/2012 at 8:45 am; Publication Date: 01/25/2012]